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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael Schwankl

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. BOX 2938

MINNEAPOLIS, MN 55402

EXAMINER

MILEF, ELDA G

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/920,573	<b>Applicant(s)</b> SCHWANKL ET AL.	
	<b>Examiner</b> Elda Milef	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/17/2002, 7/25/2002</u> . | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because of the following:
  - \*Figure 5 does not show a listing user interface 84 as disclosed in the specification p. 18.
  - \*Figure 7C does not show block 172 as disclosed in the specification p. 27 para. 55.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The disclosure is objected to because of the following informalities: p. 20, para. 38, "credit card interface 1 4" should be --credit card interface 104--.

Appropriate correction is required.

### *Claim Objections*

3. Claims 18, 31 and 48 are objected to because of the following informalities:

Claims 18 and 48: "including to a recommended price" should be -including a recommended price--. Appropriate correction is required.

Claim 31: "matching logic automatically to perform" should be --matching logic to automatically perform--.

Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 18, 24, 48, 54 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 18 and 48 recite the limitation "the second item" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 24 and 54 recite the limitation "the order" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1,2,6-17, 19, 21-32, 36-47, 49, 51-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Gillman (PG. Pub. No. 2002/0147674).

**Re claim 1:** Gillman discloses:

recording a pre-order relating to an item at the transaction facility, the pre-order specifying a plurality of pre-order attributes ("In the reverse auction, the buyer preferably specifies a good and/or service to be provided by a supplier.")-see para. 11, ("RFQ (Request for Quote)"), para. 13 and para. 30;

receiving an offer to sell the item at the transaction facility, the offer specifying a plurality of offer attributes (to which interested suppliers may provide responses ("preferably including counter-terms such as the supplier's suggested price, delivery date or schedule and any other relevant terms and conditions for providing the product to the buyer).")-see para. 30;

automatically performing a matching operation to detect a correspondence between the pre-order and the offer, the matching operation utilizing at least one pre-order attribute of the plurality of pre-order attributes and at least one offer attribute of the offer attributes to detect the correspondence ("the present invention relates to systems and methods for dynamically matching, in a networked environment, a person or business entity requesting a specialized product...with a person or business entity capable of providing that

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product.")-see para. 10 and ("buyer describes good and/ or service which it wishes to procure")-see para. 30, and para. 32;

responsive to a detection of the correspondence by the matching operation, automatically performing a transaction facilitating operation to facilitate establishment of a transaction whereby the pre-order is satisfied by the offer to sell the item-see pars. 42,48-49.

**Re claim 2:** Gillman discloses wherein the at least one pre-order attribute includes an item price-see para.30.

**Re claim 6:** Gillman discloses wherein one offer attribute includes an item price ("interest suppliers may provide responses(preferably including counter-terms such as the supplier's suggested price...")-see para. 30.

**Re claim 7:** Gillman discloses the matching operation utilizes multiple pre-order attributes and multiple offer attributes to detect the correspondence.-see para. 32.

**Re claim 8:** Gillman discloses wherein the correspondence includes a correspondence above a minimum threshold -see (bid floor, self-adjusting bid, bid increments) para. 43.

**Re claim 9:** Gillman discloses the pre-order attributes specifies a criterion, and the detecting of the correspondence includes determining whether the criterion is met or exceeded.-

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see para. 30, (information about the product), also see pars. 32, 38, 42.

**Re claims 10 and 13:** Gillman discloses the transaction facilitating operation includes communicating the pre-order to a seller from which the offer to sell was received and the pre-order communicating a subset of the plurality of pre-order attributes to the seller. -see pars. 30,34,35,42.

**Re claim 11:** Gillman disclose the communication of the pre-order to the seller occurs prior to a publication of the offer to sell by the transaction facility.-see para. 35

**Re claim 12:** Gillman disclose wherein the communication of the pre-order includes communicating to the seller a user-selectable option to instantly satisfy the pre-order with the offer thereby to establish the transaction.-see ("the system allows the buyer to have broad discretion to prematurely end the bidding, whether or not a 'winner' is chosen and/or a deal for the forging is consummated.")-see para. 45.

**Re claims 14-16:** Gillman discloses "Buyers 40 and suppliers 30 may gain entry to this web-based system..")-see pars. 27-29.

**Re claim 17:** Gillman discloses including communicating comparative price information to the seller in conjunction with the pre-order-see para. 39.



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**Re claim 19:** Gillman discloses automatically establishing the transaction whereby the pre-order is satisfied by the offer when all of the pre-order attributes are satisfied by the offer attributes.-see para. 49.

**Re claim 21:** Gillman discloses the item includes any one of a group of items including goods and services.-see pars. 11, 87.

**Re claims 22-24:** Gillman discloses wherein multiple instances of the item are in existence, and the pre-order relates to any one of the multiple instances of the item that satisfies the pre-order attributes, wherein the offer to sell relates to a specific instance of the multiple instances of the item, and wherein a single instance of the item is in existence, and both the pre-order and the order relate to the single instance of the item. -see pars. 10, 13, 30,32, 35.

**Re claims 25-27, 29,30:** Gillman discloses:  
responsive to user identification of an offering,  
communicating offering information to a user regarding the offering; and in conjunction with the offering information, communicating to the user a selectable option to pre-order the offering by specifying pre-order attribute information.

wherein the offering information relates to a specific offering and includes offer attribute information , and wherein

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the pre-order attribute information is specifiable by the user to be different from the offer attribute information;

responsive to selection by the user of the option to pre-order, soliciting the pre-order attribute information from the user;

wherein the user interface presents a plurality of a default of inputs for each plurality of pre-order attributes;

wherein the pre-order attribute information includes a price.

-see para. 30, and Figures 2-3.

**Re claim 28:** Gillman discloses the soliciting of the pre-order information includes causing display of a user interface to the user to receive the pr-order attribute information-see pars. 24 and 29, figures 2-3.

**Re claims 31,32, 36-47,49, 51-60:** Further a system would have been necessary to perform the method of previously rejected claims 1,2, 6-17, 19, 21-30 and are therefore rejected using the same art and rationale.

**Re claim 61:** Further a commerce system would have been necessary to perform the method of previously rejected claim 1 and is therefore rejected using the same art and rationale.

**Re claim 62:** Further a machine readable medium would have been necessary to perform the method of previously rejected

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claim 1 and is therefore rejected using the same art and rationale.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 3,4, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman in view of Force (US Patent No. 6,704,716).

**Re claims 3,4:** Gillman does not disclose wherein the seller rating is established based on a trading history of a seller from which the offer originates, the seller rating determined by input received from other users. Force however, teaches seller's rating determined by past transaction history, comments about the seller from previous bidders.--see col. 5 lines 61-64. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman to include rating a seller based on past transaction

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history in order for the buyer to deal with seller's who are reputable.

**Re claims 33, 34:** Further a system would have been necessary to perform the method of previously rejected claims 3 and 4 and are therefore rejected using the same art and rationale.

7. Claims 5, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman in view of Godin (U.S. Patent No. 5,890,138).

**Re claim 5:** Gillman does not specifically disclose the item description comprises a UPC code. Godin however, teaches a computer auction system supporting reverse auctions wherein the description of an item includes a UPC code.-see col. 3 lines 29-40 and Figure 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman to include a UPC code in order for the buyer and seller to easily identify the product being auctioned.

**Re claim 35:** Further a system would have been necessary to perform the method of previously rejected claim 5 and is therefore rejected using the same art and rationale.

8. Claims 18, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman in view of Pepin (PG. Pub. No. 2002/0042835).

For examination purposes, the Examiner in interpreting claims 18 and 48 to read as follows:

wherein the comparative price information includes, for the item, any one of a group of information items including a recommended price for a second item, a last sold price for an item substantially similar to the second item, an average list price for an item substantially similar to the second item, a current highest price for an item substantially similar to the second item, a current low price for an item substantially similar to the current item and a minimum listing price.

**Re claim 18:** Gillman does not disclose wherein the comparative price information includes, for the item, a current low price for an item substantially similar to the current item and a minimum listing price. Pepin however, teaches ("the user may select then indication, which informs the users of all duplicate parts currently being offered in all marketplaces supported by system. In this manner, the user may check the terms and conditions price quantity, bid, value sold price of all products currently being auctioned for the similar

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products.") -see para. 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman to include the user checking the sold price, and bids of similar products being auctioned as taught by Pepin in order to ensure that the item being sold is priced properly and therefore provide the seller with the best selling price.

**Re claim 48:** Further a system would have been necessary to perform the method of previously rejected claim 18 and is therefore rejected using the same art and rationale.

9. Claims 20, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman in view of Fickes. (Fickes, Michael. "Waste Web". Waste Age. Overland Park: Aug. 2000. Vol. 31, Iss. 8, pg. SS6, 9 pgs.).

**Re claims 20:** Although Gillman discloses the supplier submitting multiple job quotes or bids in pars. 13 and 44, Gillman does not specifically teach the offer to sell is received as part of a batch of offers from the seller to sell a plurality of items. Fickes however, teaches ("Our software offers a way to put up their bid locations in a batch all at once. They transmit the data to us, and we put it up on the

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service. The same principle works for a small restaurant chain with five or six locations."). -see p. 10 para. 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman to include receiving bids from a user by a batch process as taught by Fickes in order to provide the user the best price and to consolidate multiple orders.

**Re claim 50:** Further a system would have been necessary to perform the method of previously rejected claim 20 and is therefore rejected using the same art and rationale.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Isaf et al. (US PG Pub. No. 2002-0007340)-cited for its reference to batch purchasing.

Alaia et al. (US Patent No. 6,199,050)-cited for an electronic auction market lots, reverse auctions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elda Milef whose telephone number is (571)272-8124. The examiner can normally be reached on Monday -Thursday 8:30 am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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HYUNG SOUGH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3628